

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH WILLIAMS,

Plaintiff,

v.

CLARK COUNTY *ex rel et al.*,

Defendants.

Case No.: 2:22-cv-00045-CDS-EJY

**Order Adopting Report and
Recommendation of the Magistrate Judge**

[ECF No. 6]

On June 16, 2022, United States Magistrate Judge Elayna J. Youchah issued a Report and Recommendation (“R&R”) recommending that some claims asserted by Plaintiff with prejudice, and dismiss other claims without prejudice with leave to amend. *See* ECF No. 6 at 8. The R&R further recommended that Plaintiff have up until July 15, 2022 to file an amended complaint setting forth a claim or claims upon which relief can be granted. *Id.* at 8-9.

Consistent with the local rules, the R&R set forth that any objections to the R&R must be filing in writing within 14 days of June 16, 2022. To date, no objections have been filed.

Discussion

“[N]o review is required of a magistrate judge’s report and recommendation unless objections are filed.” *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Here, Plaintiff did not object to the R&R. While *de novo* review is not required because Plaintiff failed to file objections, I nevertheless conducted a *de novo* review of the issues set forth in the report and recommendation. 28 U.S.C. § 636(b)(1). Magistrate Judge Youchah set forth the

proper legal analysis and factual basis in the R&R. ECF No. 19.

Accordingly, I adopt the R&R in entirety and dismiss the following claims with prejudice:

- The claim seeking monetary relief against any person acting in his official capacity as the claims set forth in the complaint;
- The claim filed against the Clark County Assistant District Attorney Ashley Lacher because she is immune from suit;
- The claim filed against Judge Kathleen¹ Delaney because judges are immune from suit for judicial acts taken within the jurisdiction of the courts;
- The claims against Las Vegas Metropolitan Police Department Officers Ferron and LeGrand as these individuals are immune from suit arising from their grand jury testimony;
- The claim against the Clark County District Attorney's Office because it is not a separate entity capable of being sued under Section 1983;
- The claim against the Public Defender because the Public Defender is not an entity capable of being sued under Section 1983; and
- The claims asserting a Brady violation claim because this claim must be brought through a habeas corpus petition.

I also dismiss the claims against Clark County and the Las Vegas Metropolitan Police Department (including the claim against the Flex Team) without prejudice, with leave to amend. As set forth in the R&R, if Plaintiff decides to file a second amended complaint, he must do so no later than July 15, 2022. The second amended complaint must be labeled "Second Amended Complaint," and must identify each defendant Plaintiff seeks to sue, how each defendant was involved in the conduct that allegedly caused Plaintiff harm. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right

¹ The complaint identifies this party as "Catherine Delaney." The Court broadly interprets this cause of action as asserting a claim against Judge Kathleen Delaney who is the only Judge Delaney who sits on the Eighth Judicial District Court. See <http://www.clarkcountycourts.us/departments/judicial/>.

1 secured by the Constitution or laws of the United States; and (2) that the alleged violation was
2 committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

3 I also advise Plaintiff that this will be the final opportunity to state a claim upon which
4 relief may be granted as this would be Plaintiff's third opportunity to do so. Thus, any amended
5 complaint must be complete, standing alone, and also cure the errors identified in Magistrate
6 Judge Youchah's R&R. An amended complaint supersedes (replaces) prior complaints. an
7 amended complaint supersedes the prior complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
8 1967) ("The amended complaint supersedes the original, the latter being treated thereafter as
9 nonexistent.").

10 **Conclusion**

11 For the reasons set forth in the Order,

12 IT IS THEREFORE ORDERED that the Magistrate Judge Youchah's Report and
13 Recommendation (ECF No. 6) is **ADOPTED** in its entirety.

14 IT IS FURTHER ORDERED that, as set forth in this order, certain claims are
15 **DISMISSED WITH PREJUDICE**.

16 IT IS FURTHER ORDERED that Plaintiff's claims against Clark County and the
17 Las Vegas Metropolitan Police Department (including the Flex Team) ARE **DISMISSED**
18 **WITHOUT PREJUDICE WITH LEAVE TO AMEND**.

19 IT IS FURTHER ORDERED that if Plaintiff seeks to amend his claim, Plaintiff must
20 file a second amended complaint no later than July 15, 2022.

21 DATED this 8th day of July, 2022.

22
23 
24 Cristina D. Silva
United States District Court Judge